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Saeed Fazeli

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re: Sasan Raissi,

No: 10-61444-SLJ-7

Debtor

A.P. No. 11-05039

Saeed Fazeli,

Plaintiff,

First Amended Adversarial Complaint for
Non-dischargeability under sections
523a(2)(a), (4), and (6) of title 11 of the
United States Code and 3613 of Title 18
of the United States Code

vs.

Sasan Raissi,

Demand for Trial by Jury

Defendant.

Plaintiff Saeed Fazeli for its Complaint against Defendant Sasan Raissi alleges as
follows:

PARTY ALLEGATIONS

1. Plaintiff Saeed Fazeli (hereinafter "Fazeli") is an individual residing in Santa Clara County in the State of California and is a Creditor to the Bankruptcy Estate of Sasan Raissi.

2. Defendant Sasan Raissi (hereinafter "Raissi") is a competent natural person who at all relevant times mentioned herein was a resident of the County of Santa Clara, in the State of California.

In Re Raissi; US Bk Ct. ND Cal, SJ no.10-61444-SLJ-7; A.P. No.
First Amended Adversarial Complaint of Saeed Fazeli

1 **JURISDICTION, VENUE, AND STANDING**

2 3. A voluntary petition under Chapter 11 of the Bankruptcy Code was filed on
3 November 2, 2010 by Debtor Sasan Raissi.

4 4. This is an adversary proceeding pursuant to Federal Rules of Bankruptcy
5 Procedure 7001 (4) and 7001 (6), and a core proceeding pursuant to 28 U.S.C. Section
6 157(b). This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.
7 Sections 151, 157(b), and 1334, and Rules 3003-1 and 5011-1 of the Bankruptcy Local
8 Rules for the Northern District of California.

9 5. Venue is proper in this District pursuant to 28 U.S.C. Section 1409.

10 6. This is an action to determine that claims held by Claimant Saeed Fazeli
11 against Debtor Sasan Raissi are non-dischargeable pursuant to the provisions of
12 sections 523a(2)(a) (A) ("false pretenses, a false representation, or actual fraud, other
13 than a statement respecting the debtor's or an insider's financial condition"), (4) ("for
14 fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny), and
15 (6) (for willful and malicious injury by the debtor to another entity or to the property of
16 another entity) of title 11 of the United States Code and 3613 of Title 18 of the United
17 States Code.

18 7. The Plaintiff has standing to assert the claims herein, and to recover the
19 damages and other relief sought in this Complaint as Creditor pursuant to 11 U.S.C.
20 Section 523 and related provisions.

21 **FIRST COUNT FOR NON-DISCHARGEABILITY**

22 8. Debtor Raissi individually or fictitious entities that he is owner of have been
23 sued in dozens of lawsuits. In most instances these lawsuits are based on incidents in
24 which Debtor Raissi promised to pay people he borrowed money from or obtained
25 property from and in which Raissi did not make payment or repayment as he promised.

26 9. One of these lawsuits was filed by Plaintiff Fazeli against, among others, Sasan
27 Raissi in Santa Clara Superior Court action number 1-10-CV-182666. It stated causes of
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1 actions titled Breaches of contract by Raissi, Declaratory Relief of right to Judicial
2 Foreclosure against Raissi, Deceit by Raissi and Oliver, Fraud by Raissi and Oliver,
3 Common Counts by Raissi and Oliver, Breach of Contract by Zurich American, Rescission
4 on basis of actual fraud, and Fraudulent Conveyance by Raissi in derogation of the rights
5 of Creditor Fazeli

6 10. Defendant Raissi requested and Plaintiff Saeed Fazeli agreed, to have Plaintiff
7 Saeed Fazeli loan to Defendant Raissi the sum of \$70,000.

8 11. The purported loan was made pursuant to the representations made in writing
9 by Defendant Raissi to Plaintiff Saeed Fazeli that Defendant Raissi was going to receive
10 substantial cash in a couple of months and specifically that Defendant Raissi had entered
11 into an agreement to sell the real property commonly known as 2490 Lafayette Street for
12 \$8.5 million and to sell the business of "Construction Club" for an additional \$1.5 million.
13 Defendant Raissi gave to Saeed Fazeli a copy of a document titled "General Agreement"
14 which is the purported written agreement. The "General Agreement" on its face
15 represented that it was entered into on August 7, 2009, would result in payment through
16 close of escrow on October 30, 2009 or sooner. The purported contract titled "General
17 Agreement" was purportedly entered into with Patrick Oliver. Both Defendant Raissi and
18 Patrick Oliver signed the purported "General Agreement." A true and correct copy of this
19 purported contract is attached to this Complaint as Exhibit A.

20 12. Defendant Raissi's purported "General Agreement" was represented by
21 Defendant Raissi to be a clarification of a "Letter of Intent" from Patrick Oliver. A copy of
22 the letter of intent is attached as Exhibit B.

23 13. These documents of purported agreement between Patrick Oliver and
24 Defendant Raissi were and are a sham. Patrick Oliver never had the money or credit to
25 purchase the business or a related property, and Defendant Raissi knew that.

26 14. Defendant Raissi also represented in writing that he held property interests on
27 350 Winchester Avenue at Santana Row that was worth twenty seven million dollars

1 (\$27,000,000.00) In truth and in fact that same property had been appraised for four and
2 a half million dollars (\$4,500,000.00). Defendant Raissi knew that the property was not
3 worth that much when he showed to Saeed Fazeli an utterly false brochure purporting to
4 state a much higher evaluation for the property than the property was worth.

5 15. Defendant Raissi entered into a written agreement with Plaintiff Fazeli to
6 obtain a loan in the sum of seventy thousand dollars (\$70,000.00) as memorialized by a
7 "NOTE SECURED BY DEED OF TRUST." The contract was executed by both Plaintiff
8 Fazeli and Defendant Raissi in Santa Clara County on October 10, 2009. Performance
9 under the contract was to be made in Santa Clara County in the State of California. A
10 true and correct copy of this note is attached to this Complaint as Exhibit C.

11 16. Raissi executed a Deed of Trust with Assignment of Rents as Additional
12 Security 224-62-013 as the written document to memorialize in writing the security
13 interest given by Defendant Raissi to Plaintiff Fazeli. A true and correct copy of this
14 Deed of Trust is recorded on October 23, 2009 in the Santa Clara County Records
15 Office as official document 20477992. A true and correct copy of this deed of trust is
16 attached to this Complaint as Exhibit D.

17 17. Defendant Raissi knew, but did not disclose to Saeed Fazeli, that the property
18 upon which the encumbrance was stated was already encumbered for substantially more
19 than the property was worth.

20 18. Plaintiff Saeed Fazeli gave to Defendant Raissi on October 13, 2009 by
21 cashier's check 426846214 the sum of seventy thousand dollars (\$70,000.00).
22 Defendant Raissi received this check and cashed it. Plaintiff is informed and believes
23 and thereon alleges that Defendant Raissi deposited these funds either directly or
24 indirectly into the account of Carpet Club on about October 13, 2009.

25 19. Raissi took this check and the proceeds from the check knowing that he had
26 no intention of repaying the loan.

27 20. Plaintiff Fazeli performed all obligations required of him under the agreements
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1 with Raissi other than those obligations which the wrongful conduct by Defendant Raissi
2 and persons acting in agency with him and breach of contract by Defendant Raissi and
3 persons acting in agency with him made impossible or impractical to perform.

4 21. Defendant Raissi committed both a substantial and total breach of the
5 agreement and also committed actual fraud by, among other things:

6 making inaccurate representations both oral and written about his assets; and
7 representing inaccurately that "Patrick Oliver" was a legitimate potential buyer.

8 22. Defendant Raissi never performed under the terms of the Note Secured by
9 Deed of Trust. Defendant Raissi made one and only one installment payment to Plaintiff
10 Saeed Fazeli. That payment was by check number 1559 in the sum of seven-eight
11 thousand five hundred dollars, for which Defendant Raissi placed a stop payment order,
12 causing the check to bounce back from the bank. A true and correct copy of this check
13 with notation of stop pay directions and the lodging of the check into evidence with the
14 Santa Clara Police Department is attached to this Complaint as Exhibit E.

15 23. Plaintiff is informed and believes and thereon alleges that Defendant Raissi
16 never intended to perform under this agreement. Among other things, Defendant Raissi
17 obtained the loan by false pretenses including the presentation by Defendant to Plaintiff
18 as if true a fraudulent document purporting to state a pending sale transaction as an
19 asset of Plaintiff when in fact there was no pending sale and no such asset. Among
20 other things, Plaintiff is informed and believes that after receipt of the check from Saeed
21 Fazeli that Defendant Raissi transferred business ownership, goodwill and opportunities
22 as well as money to his relatives without any apparent consideration other than an intent
23 to have the relatives return the tangible and intangible property and money after Raissi
24 avoided payment of his obligations to Creditors including Saeed Fazeli. Among other
25 things, Raissi never made a payment on this agreement even after law enforcement
26 indicated an intent to prosecute Raissi.

27 24. Saeed Fazeli retained the services of attorney Terrell S. Root to pursue
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1 collection from Raissi of money due to Plaintiff pursuant to the terms of the Note.

2 25. It was only after law enforcement indicated an intent to prosecute Raissi and
3 only after the issuance of a notice of intent to foreclose did Raissi agree to pay any
4 money, and then only pursuant to the terms of a Mutual Release and Settlement
5 Agreement. A true and correct copy of the Mutual Release and Settlement Agreement is
6 attached to this Complaint as Exhibit F.

7 26. Raissi made only the initial payment due under the release and settlement
8 agreement, then only at the time of signing of five thousand dollars (\$5,000.00), and then
9 only when Raissi through his counsel in exchange for this initial check came into
10 possession of the original of the check for which Raissi had stopped payment. Raissi
11 kept and did not return the original of the stopped payment check and did not make any
12 further payment.

13 27. Plaintiff is informed and believes and thereon alleges that Defendant Raissi
14 never intended to perform under this second written agreement, the Mutual Release and
15 Settlement Agreement. Among other things, the only payment was issued only for Raissi
16 to obtain possession of the original stop payment check, which then caused law
17 enforcement to chose to not prosecute Raissi because of the absence of the original
18 document. Among other things, Rassi made no payment after Raissi obtained the stop
19 pay check. Among other things, Raissi's then counsel Virginia T. Hess refused thereafter
20 to be counsel for Raissi. Among other things, Plaintiff is informed and believes that after
21 execution of this second agreement that Defendant Raissi transferred business
22 ownership, goodwill and opportunities as well as money to his relatives without any
23 apparent consideration other than an intent to have the relatives return the tangible and
24 intangible property and money after Raissi avoided payment of his obligations to
25 Creditors including Saeed Fazeli. Among other things, Raissi never made any of the
26 installment payments under this agreement, other than the initial payment to get
27 possession of the original underlying note.

1 28. Each of the two transactions involving Raissi including Raissi's conduct and
2 representations of material fact made by Defendant Raissi constitute actual fraud,
3 including obtaining money by false pretenses, false representations, and actual fraud,
4 obtaining money by using a statement in writing that is materially false, and larceny
5 based on willful and malicious injury by Defendant Raissi and persons acting in agency
6 with him.

7 29. Raissi represented including by execution of the loan documents that he
8 would make payments on the loan.

9 30. Defendant Raissi and his agents as part of a pre-conceived scheme made
10 written, oral, and implied by conduct representations of material terms to Plaintiff,
11 including those identified in paragraphs 10 to 29 herein with the intention of inducing
12 Plaintiff to issue and underwrite a loan, and as part of this to give money to Raissi
13 pursuant to the terms of the loan.

14 31. Defendant Raissi in presenting to Fazeli the documents to support and justify
15 issuance of a loan directly and through his agents as part of a pre-conceived scheme
16 identified in paragraphs 10 through 29 represented that the financial information he gave
17 to Saeed Fazeli was accurate. Defendant Raissi on two instances in writing represented
18 that he would pay back Saeed Fazeli.

19 32. These false statements both orally and in written documents by Defendant
20 Raissi and through his agents, and concealment of material facts, were made with the
21 knowledge, consent, and active participation of Raissi and of Doe defendants and
22 Defendant Oliver.

23 33. These actions and representations were utterly and completely false. There
24 was no loan. Defendant Patrick Oliver turned out to be a man who is and was very very
25 poor and is and was utterly incapable of purchasing 2490 Lafayette Street or
26 Construction Club or both. Plaintiff is informed and believes and thereon alleges that
27 Defendant Oliver was paid money by Defendant Raissi to sign the purported General
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1 Agreement.

2 34. There was no clear benefit to Saeed Fazeli in the Deed of Trust he received.
3 The property commonly known as 2490 Lafayette Street was already encumbered in an
4 amount greater than its value when Saeed Fazeli was issued by Defendant Raissi the
5 Deed of Trust.

6 35. The actions and representations alleged in paragraphs 10 through 33 of this
7 Complaint were made with the intent by Defendant Raissi to obtain money from Mr.
8 Fazeli, and with the intention of avoiding Defendant Raissi being exposed to criminal
9 prosecution for his criminal actions.

10 36. The actions and representations by Defendant Raissi were false. Defendant
11 Raissi knew at the time that he made the false representations that they were false and
12 that he was intentionally concealing from Saeed Fazeli information material to the loan.

13 37. Defendant Raissi has and at the time of the fraudulent representations and
14 concealment had experience in real estate and in loans.

15 38. The inaccurate information was submitted by the Defendant and the promises
16 were made by the Defendant with the direct, legal, proximate and reasonably anticipated
17 result of deceiving Plaintiff Fazeli into issuing a loans and into Plaintiff agreeing to a
18 second loan while giving to Defendant an procedure for Defendant to take possession of
19 property that the DA expressly wanted possession of if the DA's office was going to
20 prosecute Defendant herein Sasan H. Raissi.

21 39. Plaintiff reasonably relied on these representations. The information
22 presented appeared accurate on its face.

23 40. The material misrepresentation by the Defendant Raissi resulted in the
24 reasonable reliance upon the part of Plaintiff Fazeli. Plaintiff Saeed Fazeli expended
25 time and expenses to enter into loan agreements. Plaintiff, in fact, did rely upon
26 Defendant's misrepresentations and failure to disclose material facts including by Plaintiff
27 agreeing to the initial loan, Plaintiff issuing a loan payment to Defendants, and by Plaintiff
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1 agreeing to the later signing of a settlement agreement concerning a payment dispute.

2 41. The loan was in fact obtained from Plaintiff Saeed Fazeli by defendant Raissi
3 based on these inaccurate representations and concealment of material facts, all for the
4 benefit of Defendant Raissi including to provide cash to Raissi dba Carpet Club.

5 42. Plaintiff owned, possessed and had the right to possess the funds that were
6 disbursed to Raissi directly and to Defendant Raissi individually and dba Carpet Club but
7 for the deceit by Raissi.

8 43 Plaintiff further owns, possesses and has the right by constructive trust to the
9 personal property which Defendant Raissi acquired with the funds obtained by Raissi
10 from Plaintiff Saeed Fazeli.

11 44. Defendant Raissi has failed and refuses to make payments on the loans when
12 due and is in default on the Deed of Trust secured against the real property commonly
13 known as and located at 920 Martin Avenue, Santa Clara, CA.

14 45. Defendant Raissi obtained possession of the money and of the personal
15 property referred to herein by virtue of his misrepresentations and concealment.

16 46. Plaintiff Fazeli did not knowingly consent to this taking, in that the taking by
17 Defendants was obtained by virtue of false pretenses, misrepresentations and
18 concealment.

19 47. The actions and statement of defendant Raissi was a direct, proximate and
20 legal cause of Plaintiff Fazeli sustaining damage and loss of personal property.

21 48. Plaintiff has sustained additional damages in the value of the time he spent,
22 and in the costs and fees of his counsel incurred prior to the filing of any action or
23 proceeding in efforts to obtain recovery of the converted money.

24 49. Plaintiff has incurred legal expenses and sustained losses including attorneys
25 fees as a direct, proximate, and legal result of Defendant's fraud and of Defendant's
26 failure and refusal to make payments as Defendant represented in writing in the two
27 agreements that he would do. Plaintiff is entitled to the value of the attorneys fees

1 incurred prior to commencing any action which had as its purpose obtaining recovery of
2 the money obtained by fraud and larceny as recoverable damages including as set forth
3 in Cohen v. de la Cruz, 523 U.S. 213, 223, 118 S.Ct. 1212, 140 L.Ed.2d 341 (1998).

4 50. The actions of the Defendant Raissi, including misrepresentation, conversion
5 and larceny, were made in conscious disregard of the rights of Plaintiff Fazeli. Plaintiff
6 Fazeli is thus entitled to recovery of exemplary damages to punish and make an example
7 of Defendant Raissi.

8 51. The actions of Raissi constitute the commission of a crime. They committing
9 the illegal act of making a false statement or report and of overvaluing land for the
10 purpose of influencing Fazeli in violation of the provisions of Title 18 United States Code,
11 Section 1014.

12 52. The actions of Raissi constitute larceny in that they caused the taking and
13 conversion of money from Plaintiff Fazeli.

14 53. Debtor Raissi thus obtained money by written statements that were:

15 materially false;

16 respecting the debtor's and debtor's agent's financial condition;

17 on which creditor Plaintiff reasonably relied; and

18 ones that the debtor caused to be made or published with the intent to deceive,
19 thereby proximately and legally causing damage and loss to Plaintiff. Plaintiff had
20 collections remedies that it had forgone based on the false representations by Defendant
21 Raissi of an intent to perform. See In re Siriani (9th Cir. 1992) 967 F2d 302, 306; In re
22 Campbell (6th Cir. 1998) 159 F3d 963, 966-967.

23 54. Raissi caused "willful injury" because the Debtor Raissi had a subjective
24 motive to inflict the injury and because Debtor Raissi believed the injury was substantially
25 certain to occur as a result of his conduct. In re Jercich (9th Cir. 2001) 238 F3d 1202,
26 1208; In re Su, 290 F3d at 1144.

27 55. Raissi caused a "malicious injury" under § 523(a)(6) because he committed
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1 wrongful acts, done intentionally, that necessarily caused injury, and were committed
2 without just cause or excuse.

3 56. Plaintiff Saeed Fazeli should be awarded judgment in his favor and against
4 Defendant Sasan Raissi and the court determine the debt to be non-dischargeable, for
5 the full value of the Plaintiff's initial and subsequent losses caused by Debtor Raissi's
6 fraudulent, larcenous, wilful and malicious conduct involving false written statements.
7 This includes attorney fees which were incurred and ordered in connection with a
8 nondischargeable judgment debt, economic damages and exemplary damages.

9 57. Defendant Raissi's obligations to Plaintiff are debts for:

10 money obtained by fraud or falsehood. 11 USC § 523(a)(2)(A);

11 money obtained through a false financial statement. 11 USC § 523(a)(2)(B);

12 larceny. 11 USC § 523(a)(4);

13 fraud or defalcation while acting in a fiduciary capacity. 11 USC § 523(a)(4); and

14 willful and malicious injury. 11 USC § 523(a)(6).

15 58. Plaintiff therefore requests that this Court find that Debtor Raissi is not entitled
16 to a discharge in this case of his debts to Plaintiff Fazeli.

17 PRAYER FOR RELIEF

18 I. Plaintiff requests a determination under section 523 (c)(1) of Title 11 of the
19 United States Code:

20 A. of the non-dischargeability under 11 USC § 523 (a) (2) (A) of the entirety of the
21 claims of Saeed Fazeli against Sasan Raissi on the grounds that they constitute claims
22 for money received by Debtor Defendant Raissi obtained by false pretenses, false
23 representations, and actual fraud;

24 B. of the non-dischargeability under 11 USC § 523 (a) (2) (B) of the entirety of the
25 claims of Saeed Fazeli against Sasan Raissi on the grounds that they constitute claims
26 for money received by Debtor Defendant Raissi obtained by use of a statement in writing
27 that is materially false; respecting the debtor's or an insider's financial condition; on which
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1 Saeed Fazeli relied; and that Debtor Defendant Raissi caused to be made or published
2 with intent to deceive;

3 C. of the non-dischargeability under 11 USC § 523 (a) (4) of the entirety of the
4 claims of Saeed Fazeli against Sasan Raissi on the grounds that they constitute claims
5 for money received by Debtor Defendant Raissi based on larceny; and

6 D. of the non-dischargeability under 11 USC § 523 (a) (4) of the entirety of the
7 claims of Saeed Fazeli against Michael Raissi on the grounds that they constitute claims
8 for money received by Debtor Defendant Raissi based on fraud or defalcation while
9 acting in a fiduciary capacity. 11 USC § 523(a)(4); and

10 E. of the non-dischargeability under 11 USC § 523 (a) (6) of the entirety of the
11 claims of Saeed Fazeli against Sasan Raissi on the grounds that they constitute claims
12 for money received by Debtor Defendant Raissi based on willful and malicious injury by
13 the debtor.

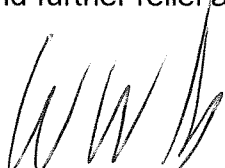
14 II. Plaintiff seeks a determination including in accordance with section 524 of Title
15 11 of the United States Code that Defendant Raissi shall not be discharged of his debts
16 including to Plaintiff herein.

17 III. Plaintiff seeks recovery of compensatory, consequential, special, and general
18 damages as well as punitive damages, as well as costs and attorney's fees herein.

19 IV. Plaintiff seeks relief from the automatic stay imposed by the filing of the
20 petition in his case so that Plaintiff Fazeli may pursue collection his claims individually
21 and as trustee.

22 V. Plaintiff seeks such other and further relief as is just and equitable.

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24 Dated: May 27, 2011



William C. Dresser
Attorneys for Creditor and Plaintiff
Saeed Fazeli

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